

OLC #78-1761/1

21 April 1978

MEMORANDUM FOR: Assistant for Information, DDA

FROM :
Chief, Records Administration Branch

SUBJECT : Comments on S. 1265 and S. 1267, and on
H.R. 11169, H.R. 11171, and H.R. 11170

Our comments on S. 1265 and S. 1267 are listed below, along with comments on H.R. 11169, H.R. 11171, and H.R. 11170, which are closely related to the Senate Acts.

S. 1265 (affects transfer of permanent records to the National Archives)

Page 1, lines 5 thru 7, reduce from 50 to 30 years the age of permanent records at which the Administrator of General Services may direct and effect their transfer to the National Archives.

COMMENT: The only exception to this authority is if the head of the agency certifies to the Administrator in writing that the records "must be retained in his custody for use in the regular current business of the agency." (44 U.S.C. 2103(2)) Furthermore, restrictions that have been imposed on access to transferred records shall remain in force after the records are 30 years old only if the Administrator by order (having consulted with the Archivist and the agency head) determines as to specific bodies of records (for reasons consistent with standards established in relevant statutory law) that the restrictions shall remain in force longer (page 2, lines 21 thru 26, and page 3, lines 1 thru 4). Although the above (with the exception of the parentheses) is the same as current law, the Agency has never faced the situation under the 50 year rule. The reduction to 30 years is acceptable only if we can be assured that the "relevant statutory law" would include the Director's authority to restrict access to sources and methods information, and furthermore that the Administrator would have to determine that the restrictions would remain in force (or, alternatively, have to refrain from exercising his option to direct and effect the transfer).

Page 2, lines 11 and 12, add the provision that the Administrator shall impose on transferred permanent records less than 30 years old those restrictions stated in writing by an agency head only if the Administrator concurs (in consultation with the Archivist).

COMMENT: Although present law, by contrast, requires that the Administrator impose the restrictions specified by the agency head, the new provision would impose no added security risk on the Agency, since if the Administrator does not concur, we simply do not transfer the records (they are less than 30 years old); but see the second paragraph of the comments on S. 1267, paragraph (a), below.

Page 2, lines 11 thru 15, add the provision that the Administrator may determine on his own that restrictions on a terminated agency's records be lifted if there is no successor to the agency.

COMMENT: Again, the Director has no specific authority in these amendments to protect sources and methods information. If a Federal agency (and its functions) are terminated without successor, and if that agency (and functions) included sources and methods information, could the Director impose authority outside the provisions of these amendments?

Page 3, lines 5 thru 19, have no effect on the Agency

S. 1267 (affects disposal of temporary records)

Paragraph (a) adds the provision that General Records Schedules shall be mandatory (as agency records control schedules are now). Also, if there is a different retention period specified for the same records in a General Records Schedule and an agency records control schedule, the shorter period will automatically apply--unless the Administrator empowers an agency, upon submission of evidence of need, to retain the records longer.

COMMENT: Making the General Records Schedules mandatory should present no problem, especially since the Agency's records control schedules include all our records, including General Records Schedule items. Assuming that "submission of evidence of need," and empowerment by the Administrator, are accomplished by the submission of our records control schedules and their approval by the Archivist, the greatest effect the "shorter retention period" requirement would have on the Agency would be a possible need to resubmit our (recently approved) records control schedules for reapproval after the effective date of the change to the statute. If this assumption is incorrect, we might have to submit a separate letter explaining our "need" and requesting approval of the longer retention period.

Another interesting question involves the two most recently issued General Records Schedules: GRS 21, Audiovisual Records, and GRS 22, Design and Construction Drawings. GRS 21 and 22 are unique in specifying in several of their disposition instructions that records be "offered" to the National Archives and Records Service. For example, GRS 21-4a states "Offer to NARS when no longer needed for administrative use or when 5 years old." GRS 22-2a(1) states "Offer to NARS within 5 years after completion of project." The question is, once the General Records Schedules become mandatory, does an "offer" instruction take precedence over the 30 year rule on the Administrator's authority to "direct and effect" a transfer to NARS? Since section 3303a(d), Title 44, provides for General Records Schedules only as "...schedules authorizing the disposal...of records...." (emphasis added), it would seem that the "offer" instruction would not be mandatory. However, see comments on H.R. 11170, below.

Paragraph (b) would require that the Administrator "shall" rather than "may" promulgate General Records Schedules.

COMMENT: No objection.

Paragraph (c) simply conforms the paragraph on promulgation of General Records Schedules to provide for the Administrator to empower an agency upon submission of need, to retain records longer than specified therein.

COMMENT: This provides for an exception to the newly mandatory General Records Schedules (see paragraph (a) comments above).

Page 2, line 17, to end, adds the provision that the original copies of Federal Register submissions, except proclamations of the President, and Executive Orders, may be disposed of in accordance with disposal schedules.

COMMENT: No effect on the Agency.

H.R. 11169 is essentially identical to S. 1265, minus the Census provision.

H.R. 11171 is essentially identical to S. 1267, minus the Federal Register provision.

H.R. 11170 adds a provision enabling an agency head to offer permanent records of any age to the National Archives "notwithstanding any other provision of law restricting the use or disclosure of any information." The imposition of any restrictions would be in accordance with section 2104, Title 44 (see comments on S. 1265, above).

COMMENT: This provision evidently is designed to allow for transfer to NARS of records otherwise restricted from "disclosure" by statutes such as the Freedom of Information Act and the Privacy

Act. Presumably, disclosure after transfer to NARS (which is exempt from these Acts) would be precluded by including as part of the transfer those restrictions normally associated with the two Acts. Once again, however, we run into the question of sources and methods, the meaning of the word "offer," and the applicability of the newly mandatory General Records Schedules (including future changes thereto).

Perhaps we are making too much of our possibly strained interpretation of these provisions; we defer to the legal specialists for resolution of these questions. The really basic question seems to involve the extent to which these proposed amendments to the Federal Records Act of 1950 affect that Act's provision that nothing therein "shall impair or affect any authority of...[the] Central Intelligence Agency."

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95TH CONGRESS
2D SESSION

H. R. 11170

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1978

Mr. PREYER introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend chapter 21 of title 44 to authorize the offering of restricted records to the National Archives under certain conditions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2103 of title 44, United States Code, is amended
4 by adding after paragraph (4) the following:
5 “Notwithstanding any other provision of law restricting the
6 use or disclosure of any information or record in the posses-
7 sion or control of any Federal agency, the head of such
8 agency may, after stating in writing (in accordance with
9 section 2104) the restrictions applicable to such information

10 or record, offer such information or record for sale to the National Archives and Records Administration.

95TH CONGRESS
2D SESSION

H. R. 11171

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1978

Mr. PREYER introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend sections 3303a and 1503 of title 44, United States Code, to require mandatory application of the General Records Schedules to all Federal agencies and to resolve conflicts between authorizations for disposal and to provide for the disposal of Federal Register documents.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 3303a of chapter 33, title 44, United States
4 Code, is amended:

5 (a) by deleting subsection (b) of section 3303a in
6 its entirety, and substituting in lieu thereof:

7 “(b) Authorizations granted under lists and schedules
8 submitted to the Administrator under section 3303 of this

95TH CONGRESS
2D SESSION

H. R. 11169

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1978

Mr. PREYER introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend chapter 21 of title 44, United States Code, to include new provisions relating to the acceptance and use of records transferred to the custody of the Administrator of General Services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That chapter 21 of title 44, United States Code, is amended
4 as follows:

5 (a) In section 2103 delete the words "fifty years" in
6 subsection (2) and substitute in lieu thereof the words
7 "thirty years".

8 (b) In section 2104 delete the third and fourth sen-
9 tences in their entirety and substitute in lieu thereof the

95TH CONGRESS
2D SESSION

S. 1267

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1978

Referred to the Committee on House Administration

AN ACT

To amend sections 3303a and 1503 of title 44, United States Code, to require mandatory application of the General Records Schedules to all Federal agencies and to resolve conflicts between authorizations for disposal and to provide for the disposal of Federal Register documents.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 3303a of chapter 33, title 44, United States
4 Code, is amended:

5 (a) by deleting subsection (b) of section 3303a
6 in its entirety, and substituting in lieu thereof:

7 “(b) Authorizations granted under lists and schedules
8 submitted to the Administrator under section 3303 of this

95TH CONGRESS
2D SESSION

S. 1265

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1978

Referred to the Committee on Government Operations

AN ACT

To amend chapter 21 of title 44, United States Code, to include new provisions relating to the acceptance and use of records transferred to the custody of the Administrator of General Services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That chapter 21 of title 44, United States Code, is amended
4 as follows:

5 (a) In section 2103 delete the words "fifty years" in
6 subsection (2) and substitute in lieu thereof the words
7 "thirty years".

8 (b) Section 2104 of title 44, United States Code, is

9 amended.
Approved For Release 2004/08/19 : CIA-RDP81M00980R000800030017-3

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Approved For Release 2004/08/19 : CIA-RDP81M00980R000800030017-3

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel
6D15 HQ

EXTENSION

6126

NO.

DATE

17 April 1978

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DDA
7D18 HQ

18 APR 1978

The attached bills have passed the Senate with several amendments. I would appreciate your comments as to their effect upon the Agency if enacted into law. If need be, we can seek amendments in the House. Please forward your comments by COB 25 April 1978.

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C/RAB

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AI/DDA

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AI/DDA: [] dc (19 Apr 78)

Distribution:

Orig PRS - C/RAB w/att

✓ - AI Subject (Legislation)

1 - AI Chrono

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15.

Att: S. 1265 - An Act to amend chapter 21 of title 44, U.S.C., to include new provisions relating to acceptance and use of records transferred to the custody of the Administrator of General Services, dtd 5 Apr 78.

Approved For Release 2004/08/19 : CIA-RDP81M00980R000800030017-3

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Approved For Release 2004/08/19 : CIA-RDP81M00080R000800030017-3

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Associate Assistant for Information, DDA
7D02 Headquarters

EXTENSION

5117

NO.

DATE

25 April 1978

TO: (Officer designation, room number, and building)

DATE

RECEIVED

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. OLC

Attn:

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Please find attached the DDA
comments on: S. 1265, S. 1267,
H.R. 11169, H.R. 11171, and
H.R. 11170.

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Atts: As Stated